

MONTANA LEGISLATIVE HISTORY

Chapter 441 19 81

Bill H _____ S 288

Original bill & history C

H. Committee on Judiciary

Hearing Date(s) Mar 25 ☒ C

Mar 26 ☒ C

_____ ☐ C

_____ ☐ C

Date Out Mar 26 ☒ C

S. Committee on Judiciary

Hearing Date(s) Feb 02 ☒ C

Feb 18 ☒ C

_____ ☐ C

_____ ☐ C

Feb 18 ☒ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

TRANSMITTED TO GOVERNOR: 4/23/81
ACTION: 5/1, SIGNED
CHAPTER 583

287 — HANLEY, CONROY, GRAHAM, GALT — PROVIDING FOR DISPOSITION OF
ABANDONED REAL PROPERTY INTERESTS ACQUIRED FOR A PUBLIC USE.

INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY: 1/26

HEARING: 2/12

REPORT: 2/19, DO PASS AS AMENDED

2ND READING: 2/24, DO PASS AS AMENDED

3RD READING: 2/25, YEAS: 49; NAYS: 0

TRANSMITTED TO HOUSE: 2/25

REFERRED TO COMMITTEE ON JUDICIARY: 3/3

HEARING: 3/25

REPORT: 3/28, BE CONCURRED IN, AS AMENDED

2ND READING: 3/31, YEAS: 89; NAYS: 0

ON MOTION, 3/31, RULES SUSPENDED, PLACED ON 3RD READING.

3RD READING: 3/31, YEAS: 96; NAYS: 0

RETURNED TO SENATE WITH AMENDMENTS: 3/31

2ND READING: 4/10, BE CONCURRED IN

ON MOTION, 4/11, RULES SUSPENDED, PLACED ON 3RD READING

3RD READING: 4/11, YEAS: 46; NAYS: 1

TRANSMITTED TO GOVERNOR: 4/15/81

ACTION: 4/20, SIGNED

CHAPTER 440

288 — S. BROWN — IMPLEMENTING CONSTITUTIONAL AMENDMENT NO. 9,
REGARDING CONFIDENTIALITY OF PROCEEDINGS BEFORE THE JUDICIAL
STANDARDS COMMISSION.

INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY: 1/27

HEARING: 2/3

REPORT: 2/18, DO PASS

2ND READING: 2/20, DO PASS

3RD READING: 2/24, YEAS: 50

TRANSMITTED TO HOUSE: 2/24

REFERRED TO COMMITTEE ON JUDICIARY: 3/3

HEARING: 3/25

REPORT: 3/26, BE CONCURRED IN, AS AMENDED

2ND READING: 3/31, AS AMENDED — YEAS: 81; NAYS: 3

ON MOTION, 3/31, RULES SUSPENDED, PLACED ON 3RD READING.

3RD READING: 3/31, YEAS: 91; NAYS: 1

RETURNED TO SENATE WITH AMENDMENTS: 3/31

2ND READING: 4/10, BE CONCURRED IN

ON MOTION, 4/11, RULES SUSPENDED, PLACED ON 3RD READING

3RD READING: 4/11, YEAS: 47; NAYS: 0

TRANSMITTED TO GOVERNOR: 4/15/81

ACTION: 4/20, SIGNED

CHAPTER 441

289 — LEE — REQUIRING THE ATTORNEY GENERAL TO CHALLENGE FEDERAL
LAWS THAT IMPAIR TAXING AUTHORITY OR AUTONOMY OF THE STATE.

INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY: 1/27

HEARING: 2/17

REPORT: 2/19, DO PASS AS AMENDED

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 3, 1981

The eighteenth meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 288:

IMPLEMENTING CONSTITUTIONAL AMENDMENT
#9, REGARDING CONFIDENTIALITY OF PROCEEDINGS
BEFORE THE JUDICIAL STANDARDS COMMISSION.

Senator S. Brown presented the bill, which he described as an attempt to balance public right to know with a judge's right to be free from unfounded allegations. He then spoke to the several sections of the bill, and ended by recommending that this bill be kept in committee until a similar one introduced by Senator Ochsner can be considered at the same time.

CONSIDERATION OF SENATE BILL 182:

REVISE METHOD OF EXECUTION; 46-19-103.

Senator B. Brown, District 10, Whitefish, presented the bill as its sponsor. He feels that hanging is an outdated and cruel method of executing a prisoner. He said that the language of his bill came from the New Mexico and Oklahoma statutes.

Gary Jensen, of the Montana Conference of Seventh Day Adventists, spoke in support of the bill because he felt it presented a more humane, dignified method of execution.

Judy Olson, representing the Montana Nurses Association, stated that nurses won't want to be the ones to administer the lethal injection.

Curt Chisholm, Deputy Director of the Department of Institutions, opposed the bill because he feels that medical personnel will refuse to carry it out, and because the warden does not want the task of performing the injection.

Senator Crippen asked about the condemned man who wants to

DISPOSITION OF SENATE JOINT RESOLUTION 20:

Senator Crippen moved that the bill DO PASS AS AMENDED, and his motion carried unanimously.

DISPOSITION OF SENATE BILL 478:

Senator Halligan moved that the bill do pass, and was the only one voting for this motion. Senator O'Hara then moved that the bill DO NOT PASS, and that the order of the previous vote be reversed. His motion carried with only Senator Halligan opposing.

DISPOSITION OF SENATE BILL 290:

Senator Mazurek moved that the bill DO PASS, and his motion carried unanimously.

DISPOSITION OF SENATE BILL 288:

Senator O'Hara moved that the bill DO PASS.

Senator Anderson asked that the record show that on Senate Bill 369, the testimony of the proponents was limited to those in attendance, and that a certain Jeanne Anderson, who was forced to return to Billings, was never reached by telephone after Chairman Anderson's repeated calls; and further, that although the committee left an opening to other proponents of Senate Bill 369, none ever came forward, and that as of this date the committee is closing any further options for testimony on Senate Bill 369.

Senator S. Brown said that according to Judge Gulbrandsen, Judge Martin no longer has any problems with SB 288. He said that there have been no problems with his bill, and no one has approached him with opposition to it.

Senator O'Hara's motion passed unanimously.

DISPOSITION OF SENATE BILL 369:

Senator S. Brown moved that the bill DO NOT PASS, and his motion carried unanimously.

DISPOSITION OF SENATE BILL 364:

Senator Halligan moved that the bill DO NOT PASS, and his motion carried with Senators Olson and Tveit opposing.

Chairman Anderson asked Senator Crippen to carry the adverse committee report on the floor, and Senator Crippen agreed to do so.

the land back why should the highway department try to decide who gets it. REP. KEEDY asked what if it is a 2/3 to 1/3 situation and they cannot agree. It was answered as long as they agree on the purchase of the land and buy it, it would be up to them on how to divide it.

SENATE BILL 288 SENATOR S. BROWN, sponsor of the bill, stated this is to implement the constitutional amendment no. 9, regarding the confidentiality of proceedings before the Judicial Standards Commission. This will implement what the voters passed. Section 2 is a new section that when a case is pending concerning the reviewing of a judge by the commission, the commission shall make their recommendation to the supreme court. The supreme court would take the final action.

If the commission recommended a case to the supreme court certain materials would be available to the public. If some of the charges were not valid, the public would only have access to the material that was valid. All transcripts concerning the misconduct would be released.

In section 3 of the bill, if any judge waives the right to privacy all records will be made available - unlike the present situation in Justice Shea's case.

Section 4, which is taken from the ABA standards, concerns when the commission could make public statements. Section 5 is also taken out of the ABA standards. In certain situations the commission may release information. Section 6 is important because it gives legislative audit committee authority to audit the commission. The audit will follow up on complaints.

Section 7, a biannual reporting would be required. Of the cases that have been brought before the commission 90-95% are from people who did not like the outcome of the case. Subsection D of section 7 deals with previous complaints against the judge.

There were no proponents.

There were no opponents.

The Senator closed the bill.

REP. KEEDY stated on page 2 being able to make papers and transcripts available to the public on charges upon which probable cause was found; how do you distinguish the allegations between judge A and judge B? SENATOR BROWN replied most of the charges that arise are brought by one person bringing a matter to the

commission's attention. There is usually publicity. The real problem is the difficulty in distinguishing the documents that do not relate to the action of the supreme court. It heightens the distrust.

REP. KEEDY stated if the material is available, it is in the public's interest and the judge's interest to have that information available relating to charges regardless of whether the commission requires disciplinary action. What if the commission is not doing the job? SENATOR BROWN stated he was not sure what the commission allows the judge to talk about. REP. HANNAH asked what the rationale is for not opening these hearings to the public. SENATOR BROWN stated often times losing parties will state things that did not happen. There must be a way of distinguishing between the mad litigant who lost and a valid complaint. REP. HANNAH felt that came with the territory of being a judge.

SENATE BILL 289 SENATOR LEE, sponsor, stated this bill's purpose is to require the attorney general to challenge federal laws that impair taxing authority or autonomy of the state. EXHIBIT 7.

There were no proponents.

There were no opponents.

The Senator closed the bill.

REP. YARDLEY asked if the Attorney General already had this authority. SENATOR LEE said it could be assumed that but this is not duplicating language.

There were no further questions.

EXECUTIVE SESSION

SENATE BILL 289 REP. SEIFERT moved do pass.

REP. KEEDY objected to the motion because the Attorney General already has the authority to do this and it would add material to the codes that is unnecessary. REP. YARDLEY agreed.

The motion of do pass failed with TEAGUE, CURTISS, MCLANE, HANNAH and MATSKO the only members voting for the bill. REP. IVERSON moved to reverse the vote to do not pass. The motion carried with TEAGUE, CURTISS, MCLANE, HANNAH, and MATSKO opposing.

SENATE BILL 222 REP. CURTISS moved the committee reconsider action on the bill for purpose of amendments. EXHIBIT 6. The motion resulted in a roll call vote. Those voting yes were: KEYSER, SEIFERT, CURTISS, HANNAH, IVERSON, MATSKO, MCLANE, and ANDERSON. Those voting no were: BENNETT, CONN, EUDAILY, DAILY, HUENNEKENS, SHELDEN, KEEDY, TEAGUE and BROWN. The motion failed 9 to 8.

SENATE BILL 246 REP. BROWN moved do pass.

REP. BROWN stated he would prefer to take chances that estimates from an insurance company would be better than the bluebook.

REP. HANNAH spoke against the motion. This will effect the cost of insurance. The establishing of value of a wrecked car will be a source of argument.

REP. MATSKO stated his car was worth \$300-\$500 dollars book value. With 4-wheel drive equipment, however it could be sold for \$800-\$1,000. Yet the insurance company would settle for \$300-\$500 dollars.

REP. TEAGUE asked who determines the value of the car. It was answered the insurance company of the owner. There are no real guidelines. REP. CONN stated many people who drive older cars believe the car is worth more than book value. It is valuable to them and an investment.

REP. HANNAH stated no matter how much money is placed into the car the value will not go up. The insurance company should not have to pay you that. REP. DAILY stated they would pay the replacement value of the motor vehicle.

The motion of do pass carried with HANNAH, TEAGUE, and SHELDEN voting no. REP. BROWN was assigned to carry the bill.

SENATE BILL 288 REP. KEEDY moved do pass. REP. KEEDY moved the amendments be adopted as in EXHIBIT 7. REP. KEEDY stated the bill is intended to open up proceedings of judicial standards to public scrutiny yet it really does not. With the proposed amendments it will allow public access for each charge with probable cause. This will broaden the bill. This will open up to the public hearings before the supreme court to make a recommendation. REP. DAILY questioned if there would be less hearings because of it. REP. KEEDY did not think it was possible.

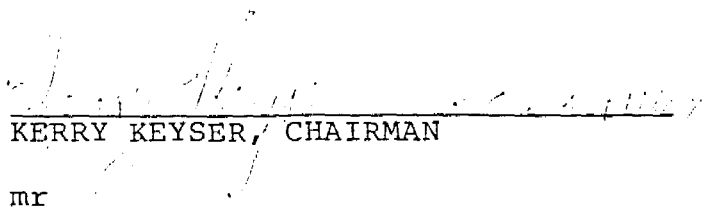
It will help move it in a positive direction.

REP. EUDAILY asked how many laypeople are on the commission. It was replied two laypeople, one lawyer and two judges.

The amendments carried unanimously.

REP. HANNAH moved do pass as amended. The motion carried.
REP. TEAGUE was assigned to carry the bill.

The meeting adjourned at 11:00 a.m.


KERRY KEYSER, CHAIRMAN

mr

AMENDMENTS TO SENATE BILL NO. 288

1. Title, line 10.

Following: line 9

Strike: "SECTION"

Insert: "SECTIONS"

Following: "3-1-1105"

Insert: "AND 3-1-1107"

2. Page 1, line 25.

Following: "disclosure"

Strike: "of record"

3. Page 2, lines 1 through 3.

Following: "commission" on line 1

Strike: remainder of line 1 through "3-1-1106(3)" on line 3

Insert: "finds probable cause for charging a judge with judicial misconduct"

4. Page 2, line 8.

Following: ";

Strike: "and"

Insert: "(2) the proceedings in which the commission or masters hear the charges of misconduct; and"

Renumber: subsequent subsection

5. Page 2, line 11.

Following: "in"

Strike: "subsection"

Insert: "subsections"

Following: "(1)"

Insert: "and (2)"

6. Page 2.

Following: line 11

Insert: "Section 3. Section 3-1-1107, MCA, is amended to read:

"3-1-1107. Action by supreme court. (1) the supreme court shall review the record of the proceedings and shall make such determination as it finds just and proper and may:

(1) (a) order censure, suspension, removal, or retirement of a judicial officer; or

(2) (b) wholly reject the recommendation.

(2) Any hearing conducted before the supreme court relative to a recommendation by the commission, together with all papers pertaining to such recommendation, shall be accessible to the public."

Renumber: subsequent sections